IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

OP.No. 8607 of 2003(Y)

PETITIONER:

M/S. J.J.FOOD INDUSTRIES,
KINGINIMATTOM P.O., KOLENCHERRY, REPRESENTED BY
IT'S MANAGING PARTNER MRS.DARLEY JOY.

BY ADV. SMT.K.LATHA.

RESPONDENTS:
----

1. **THE DEPUTY TAHASILDAR (REVENUE RECOVERY)**
   KUNNATHUNAD TALUK OFFICE, PERUMBAVOOR.

2. **THE COMMISSIONER OF COMMERCIAL TAXES,**
   THIRUVANANTHAPURAM.

3. **THE SALES TAX OFFICER, IIIRD CIRCLE**
   PERUMBAVOOR.

4. **THE STATE OF KERALA, REPRESENTED BY THE**
   CHIEF SECRETARY TO THE GOVERNMENT OF KERALA,
   SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. C.K. GOVINDAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. NO. 8607/2003:

J U D G M E N T

When the matter is taken up today for hearing, neither the counsel for the petitioner nor the petitioner is present. Therefore, this original petition is dismissed for default.

06/02/2007. Sd/- C.N. Ramachandran Nair, Judge.

Order on C.M.P. No. 15007/2003 in O.P. No. 8607/2003

Dismissed

06/02/2007. Sd/- C.N. Ramachandran Nair, Judge.

//True Copy//

prv.

C.N.RAMACHANDRAN NAIR, J.

.....

O.P. No.8607 of 2003

.....

Dated this the 27th day of March, 2007.

JUDGMENT

Heard counsel for the petitioner and Government Pleader. The petitioner is challenging demand of interest under Section 23(3) of the KGST Act on short payment of tax for the years 1999-2000 and 2000-2001. The petitioner claimed concessional rate of tax which was applicable to products of small scale industrial units. However, it was found that petitioner had obtained only a provisional certificate and final entitlement certificate as Small Scale Industry was not obtained by the petitioner. Assessment order at higher rate is not under contest. Interest levied under Section 23(3) of the KGST Act is upheld in revision vide Ext.P6 order against which petitioner has filed this O.P.

The contention of counsel is that Section 23(3) is not applicable because petitioner has not deliberately defaulted payment of tax and the provision does not authorise levy of interest on differential tax. Government Pleader submitted that petitioner was not engaged in any manufacture and was not entitled to concessional rate as items sold were manufactured by others on behalf of the petitioner. In any case since

Section 23(3A) is introduced to the statute with effect from 1.4.1998, interest is payable on differential tax. The petitioner's claim for concessional rate was admittedly irregular and therefore, petitioner has no escape from payment of interest under Section 23(3A) of the Act, if not under Section 23(3) of the Act. In view of this finding, there is no need to consider whether the claim of concessional rate was bonafide or not based on argument of the Government Pleader that petitioner was not engaged in manufacturing of goods, but was marketing goods manufactured by others on behalf of the petitioner. Amnesty scheme was introduced by the Government in 2004 reducing interest for settlement of liability. The petitioner was enjoying conditional stay granted by this court on 17.3.2003 whereunder this court directed payment of 50% of the disputed interest. Having regard to the stay granted by this court and the payment made by the petitioner and in view of the amnesty benefit granted to others by the Government, I feel petitioner can be granted waiver of 25% interest. Accordingly I modify Ext.P6 by reducing the interest to 75% of the interest levied, provided balance interest is paid by the petitioner before 15.5.2007. However, if the petitioner does not make payment as above, then the waiver of interest granted will stand vacated and respondents will be free to

proceed for recovery of entire balance arrears.

The O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms